

# In the Court of Appeals of the State of Alaska

**Andrew Dayton,**

Appellant,

v.

**State of Alaska,**

Appellee.

Court of Appeals No. **A-13466**

## **Order**

Date of Order: **June 3, 2021**

Trial Court Case No. **4FA-98-02438CR**

On May 21, 2021, the Anchorage Daily News posted an article stating that Andrew Dayton had died at an Anchorage hospital while in the custody of the Department of Corrections.<sup>1</sup> Based on that article, it appears that Dayton was in custody for the convictions that are the subject of this appeal.

If a defendant in a criminal case dies while his direct appeal is pending, the defendant's personal representative has the option of continuing to pursue the appeal on behalf of the defendant's estate. *See State v. Carlin*, 249 P.3d 752 (Alaska 2011). In such circumstances, the personal representative of the estate (or a lawyer on behalf of the estate) must file a motion to substitute the estate for the appellant. *Id.* at 763 & n.60, 766. If the estate does not move for substitution, the appeal is dismissed, and the defendant's convictions remain intact. *Id.*

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<sup>1</sup> *See* Tess Williams, *77-Year-Old Man Dies in Alaska Department of Corrections Custody Officials Say*, Anchorage Daily News, May 21, 2021, at A2.

*Dayton v. State* - p. 2  
File No. A-13466  
June 3, 2021

Accordingly, **IT IS ORDERED:**

1. The appellant's attorney shall make diligent inquiry and, by the close of business on July 5, 2021, the appellant's attorney shall inform this Court whether the appellant, Andrew Dayton, is alive or has died.

2. If Mr. Dayton has died, the appellant's attorney shall also inform this Court whether Mr. Dayton's estate intends to pursue this appeal. If the estate intends to continue with the appeal, the attorney must file a motion seeking substitution of the estate for Mr. Dayton personally. *See* Appellate Rule 516(a); *Carlin*, 249 P.3d at 763 n.60.

3. If Mr. Dayton has died, and if the estate notifies this Court that it does not intend to pursue the appeal, the appeal will be dismissed. Likewise, if Mr. Dayton has died, and this Court does not hear from the estate by the July 5th deadline (or by any extended deadline granted by this Court), the appeal will be dismissed.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



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